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No. 80-1345

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

KAISER STEEL CORPORATION
Petitioner,

vs.

JULIUS MULLINS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF *AMICUS CURIAE* OF THE CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

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BRIEF *AMICUS CURIAE* OF THE CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

INTEREST OF THE *AMICUS CURIAE*

The Central States, Southeast and Southwest Areas Pension Fund is a multi-employer pension fund, administered in accordance with Section 302 of the Taft-Hartley Act, 29 U.S.C. § 186, by a board of trustees composed of an equal number of employee and employer representatives. Almost 500,000 employees participate in the Central States Fund, of whom 20% are presently receiving benefits and the remainder are actively employed under collective bargaining agreements requiring employer contributions in their behalf for each week in which they work. Approximately 14,000 employers are bound to these

collective bargaining agreements, and the funding of benefits for their employees is based on the employers' contributions and the investment income earned from those contributions. Prompt and correct payment of these contributions is an important element of successful benefit funding in that contribution payment delinquencies (and consequent loss of investment income) limit resources available for all beneficiaries, especially in view of requirements that service credits toward benefits must be given to employees for time worked, regardless whether or when the contractually required contribution payments are received by the Fund. Thus, any policy which might permit delay of, or excuse from, those contribution payments would be adverse to any pension fund's interests. It is for this reason that the Central States, Southeast and Southwest Areas Pension Fund offers this brief *amicus curiae* in support of Respondent Trustees of the United Mine Workers of America Health and Retirement Funds.

Written consent for the Central States Fund's filing of this brief has been granted by counsel for all parties, and copies of these consents have been filed with the Clerk of the Court.

SUMMARY OF ARGUMENT

Trust funds like Respondents' herein provide benefits to employees and their families based on work already performed under a collective bargaining agreement. When an employer fails to make contributions to the fund, it necessarily limits available resources and thus affects the employee's level of benefits as well as the costs of contributing employers to provide the same benefits. Because recent legislation requires pension funds to grant service credits and consequent benefits on the basis of employee work performed, regardless whether contractually required contributions have actually been paid for that work, the economic impact of a contribution delinquencey, delay, or avoidance has become a serious threat to any fund's financial integrity.

This Court's decision in *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459, has become the foundation for the well-established principle that an employer may not avoid its obligation to its employees' benefit trust fund by claiming a set-off due to a dispute with the employees' union. Any other policy would only penalize the employees and the funds for an argument to which they are not a party. For these reasons, Petitioner should not be permitted to abrogate its agreement to make contributions to an employee benefit trust simply because it questions the propriety of the collective bargaining agreement it has negotiated and accepted with the union which represents that fund's beneficiaries.

ARGUMENT

The Employer's Obligation To The Trust Funds Which Protect Its Employees And Their Families Should Not Be Diminished By Its Disputes With Those Employees' Union.

The gravamen of Petitioner's case is that allegedly unlawful provisions in its collective bargaining agreement with its employees' union excuse it from payment of contributions to the trust funds which must provide medical and retirement benefits to those employees and their families. Such attempts to avoid obligations to the Respondents' trust fund by raising arguments with the non-party union both frustrate legitimate fund processes and deny reasonable employee expectations. To permit Petitioner relief from its agreement to fund these programs is to invite every employer to delay and avoid its contributions under the guise of disputing its agreement with the union which is not even party to the action.

In *Lewis* v. *Benedict Coal Corp.*, 361 U.S. 459, this court held that an employer may not moderate its obligation to an employee benefit trust fund by set-off of its claim against the union which negotiated the collective bargaining agreement creating that obligation; any other result would improperly cause "the burden...[to] fall in the first instance upon the employees and their families across the country." *Id.*, at 469. To prevent this unfair transferance of the employer-union dispute to the benefit trust funds and the uninvolved employers and employees they service, the courts have consistently ruled that a defense based on the employer-union dispute will not diminish the rights of the trust fund to seek the contributions owed pursuant to the challenged agreement, *Lewis* v. *Seanor Co.*, 382 F.2d 437 (3rd Cir. 1967); *Mearns* v. *Lewis*, 168 F. Supp. 134 (W. Va. 1958), aff'd 268 F.2d 427 (4th Cir. 1959); *Lewis* v. *Owens*, 338 F.2d 740 (6th Cir. 1964); *Lewis* v. *Quality Coal Corp.*, 270 F.2d 140 (7th Cir. 1959), *cert. den.*, 361 U.S. 929.

> "A fair reading of *Benedict* discloses the court's purpose to give the ultimate beneficiaries of the welfare fund (the men who mined the coal, and their dependents) a status that would insulate them from the consequences of a breach of contract by either the...union, as promisee, or the trustees of the Fund, as fiduciaries charged with the administration of the fund." *Lewis* v. *Mill Ridge Coal, Inc.*, 298 F.2d 552, 557 (6th Cir. 1962).

This dichotomy between fund and union has been reflected recently in another context in *NLRB* v. *Amax Coal Co.*, ____ U.S. ____, 101 S. Ct. 2789 (1981).

These needs to protect the funds and their beneficiaries are even more pressing since the passage of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*, which requires that pension funds grant service credits, and consequent benefits, to employees who have worked under an appropriate collective bargaining agreement regardless whether the required contributions have actually been paid. "Whether payments to the trust have or have not been made by the employer is not relevant in the determination as to whether or not an employee qualifies [for benefits]. See Labor Department Advisory Opinion Letter on Delinquent Contributions dated August 31, 1976, Opinion 76-89, 221 B.N.A. Pension Reporter R-24." *Central States, Southeast and Southwest Areas Pension Fund* v. *Hitchings Trucking, Inc.*, 472 F. Supp. 1243, 1247 (E. Mich. 1979).

To protect the funds and their beneficiaries many courts have gone so far as to enjoin payment of contributions, an action usually taken to assure prompt and continued payment of contributions regardless of any employer defenses (other than correct calculation of the obligation). Demonstrating this analysis is *Huge* v. *Long's Hauling Co., Inc.*, 442 F. Supp. 1041, 1043, (W. Pa. 1977), aff'd. 590 F.2d 457 (3rd Cir. 1978), *cert. den.* 442 U.S. 918, where an employer was enjoined from violating

the terms of a labor contract and severely limited in its disposition of assets—all in spite of the employer's pending counterclaim against the plaintiff funds' trustees. See also: *Huge* v. *Old Home Manor, Inc.*, 419 F. Supp. 1019, 1021 (W. Pa. 1976); *Bldg. Trades United Pension Trust Fund, et al.* v. *A.J.M. Construction Service,* ____ F. Supp. ____, 87 L.C. ¶11,743[1] (E. Wis. 1979); *Central States Pension Fund* v. *H.W. Franke,* ____ F. Supp. ____, 80 L.C. ¶12,017 (E. Mo. 1976); *Operating Engineers Local 139 Health & Welfare Fund, et al.* v. *James Gyuro Grading Co., Inc.,* ____ F. Supp. ____, 219 BPR A-3, (E. Wis. 1978).

It was with these concerns for the economic integrity of the trust fund in view of mandatory credits and consequent benefits that Judge Joiner stressed the fund's "anomalous position":

> "It would be no defense whatsoever to the [benefit] claims being made by the employees. As a result of this decision, it would be required to meet the financial burdens of ERISA's guarantee in the form of pension [benefit] payments without corresponding contributions.... As the plan covers several hundred thousand participants, with over 1400 contributing employers, the actuarial soundness of the Fund would be compromised." *Central States Pension Fund* v. *Hitchings, supra.*

The employer may not rely upon an allegation of an unfair labor practice by the union, a structural violation of the trust fund, or a lack of majority status to avoid its contribution obligations, *Trust Fund Services* v. *Heyman,* ____ F. Supp. ____, 79 L.C. ¶11,525, (Wash. Ct. Apps. 1976); *Sheet Metal Industry Trust Fund* v. *Commercial Roofing and Sheet Metal,*

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[1]Decisions not yet published in the West Reporter service have been cited to the labor services of the Commerce Clearing House and the Bureau of National Affairs.

____ F.2d ____, 91 L.C. ¶12,728 (D.C. Cir. 1981); *Contractors, Laborers, Teamsters, and Engineers Health and Welfare Plan* v. *Associated Wrecking Co.*, 638 F.2d 1128, (8th Cir. 1981); *Audit Services, Inc.* v. *Stewart and James*, 106 LRRM 2359 (Mont. Sup. Ct. 1981). See also: *Teamsters Local 13 Health and Welfare Fund* v. *Hawg N Action*, ____ F.2d ____, 107 LRRM 2865, (10th Cir. 1981); *Carter* v. *CMTA-Molders Health and Welfare Trust*, 489 F. Supp. 704 (N. Calif. 1980); *Florida Marble Polishers Health and Welfare Trust Fund* v. *Megahee*, ____ F. Supp. ____, 87 L.C. ¶11,735 (M. Fla. 1979); *Vermeer* v. *Aloha Contractors, Inc.*, ____ F. Supp. ____, 90 L.C. ¶12,466 (Ore. 1980). The purpose of the trust is to protect the employees and their families, not to buffer an employer's dispute with the union; "An employer should not be permitted to abrogate the agreement retroactively after he has reaped all of his expected benefits from the agreement." *Western Washington Laborers-Employers Health and Security Trust Fund* v. *Newman*, ____ F. Supp. ____, 90 L.C. ¶12,379 (W. Wash. 1980), at p. 25,915.

The policies at issue here were well expressed in the instant litigation:

> "...the trustees of a union welfare fund are sometimes immune from contract defenses that could be asserted against the union itself because such a rule better serves the concern of federal labor policy to protect union members and their families from the actionable wrongs of their union representatives." *Mullins* v. *Kaiser Steel Corp.*, 642 F.2d 1302 (D.C. Cir. 1980), at 1312.

Any other rule would only limit fund resources for employees and their families; raise costs for employers who do not use these tactics to avoid contribution obligations based on work already performed; and invite unscrupulous employers to use the issues here in dispute as a pretext to excuse themselves from established collective bargaining agreements.

CONCLUSION

For these reasons, we respectfully urge the Court to reject the contentions of the Petitioner and to affirm the decision of the Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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